

AMENDED IN ASSEMBLY JUNE 1, 2010

AMENDED IN ASSEMBLY APRIL 27, 2010

AMENDED IN ASSEMBLY APRIL 12, 2010

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

ASSEMBLY BILL

No. 2758

Introduced by Assembly Member Bradford

February 19, 2010

An act to amend the heading of Article 5 (commencing with Section 8281) of Chapter 7 of Division 4 of, and to amend Sections 8281, 8283, 8284, 8285, and 8286 of, the Public Utilities Code, relating to Public Utilities Commission regulated corporations.

LEGISLATIVE COUNSEL'S DIGEST

AB 2758, as amended, Bradford. ~~Public utilities and cable television~~
Utilities Commission: regulated corporations: procurement.

(1) Under existing law, the Public Utilities Commission has regulatory authority over public utilities, including electrical, gas, water, and telephone corporations, ~~and cable television corporations, as provided.~~ Existing law directs the commission to require every electrical, gas, water, and telephone corporation with annual gross revenues exceeding \$25,000,000, and their regulated subsidiaries and affiliates, to implement a program developed by the commission to encourage, recruit, and utilize minority-, women-, and disabled veteran-owned business enterprises, as defined, in the procurement of contracts from those corporations or from their regulated subsidiaries and affiliates, and to require the reporting of certain information. The commission, by rulemaking, adopted General Order 156, applicable to certain

electrical, gas, and telephone corporations, to effectuate these requirements.

~~This bill would make cable television corporations with annual gross revenues exceeding \$25,000,000 subject to these requirements. The bill would also require the corporations subject to these requirements to provide information to the commission about which procurements are made with women, minority, and disabled veteran business enterprises with at least a majority of the enterprise's workforce in California.~~

Under existing law, a violation of any provision of the Public Utilities Act or any rules or orders of the commission is a crime. In addition, any person or corporation who falsely represents a business as a woman, minority, or disabled veteran business enterprise for the purposes of the programs discussed above is subject to criminal penalties.

Because a violation of the requirements of the bill would be a crime under those provisions, this bill would impose a state-mandated local program.

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. The heading of Article 5 (commencing with
2 Section 8281) of Chapter 7 of Division 4 of the Public Utilities
3 Code is amended to read:

4
5 Article 5. Women, Minority, and Disabled Veteran Business
6 Enterprises

7
8 SEC. 2. Section 8281 of the Public Utilities Code is amended
9 to read:

10 8281. (a) The Legislature hereby finds and declares that the
11 essence of the American economic system of private enterprise is
12 free, open, and transparent competition. Only through free, open,
13 and transparent competition can free markets, reasonable and just
14 prices, free entry into business, and opportunities for the expression

1 and growth of personal initiative and individual judgment be
2 assured. The preservation and expansion of that competition is
3 basic to the economic well-being of this state and that well-being
4 cannot be realized unless the actual and potential capacity of
5 women, minority, and disabled veteran business enterprises is
6 encouraged and developed. Therefore, it is the declared policy of
7 the state to aid the interests of women, minority, and disabled
8 veteran business enterprises in order to preserve reasonable and
9 just prices and a free competitive enterprise, to ensure that a fair
10 proportion of the total purchases and contracts or subcontracts for
11 commodities, supplies, technology, property, and services for
12 regulated public utilities, including, but not limited to, renewable
13 energy, wireless telecommunications, broadband, smart grid, and
14 rail projects, are awarded to women, minority, and disabled veteran
15 business enterprises, and to maintain and strengthen the overall
16 economy of the state.

17 (b) (1) The Legislature finds all of the following:

18 (A) The opportunity for full participation in our free enterprise
19 system by women, minority, and disabled veteran business
20 enterprises is essential if this state is to attain social and economic
21 equality for those businesses and improve the functioning of the
22 state economy.

23 (B) Public agencies and some regulated utilities which have
24 established short- and long-range women, minority, and disabled
25 veteran business enterprise goals are awarding 30 percent or more
26 of their contracts to these business enterprises.

27 (C) Women, minority, and disabled veteran business enterprises
28 have traditionally received less than a proportionate share of
29 regulated public utility procurement contracts, especially in
30 renewable energy, wireless telecommunications, broadband, smart
31 grid, and rail projects.

32 (D) It is in the state's interest to expeditiously improve the
33 economically disadvantaged position of women, minority, and
34 disabled veteran business enterprises.

35 (E) The position of these businesses can be substantially
36 improved by providing long-range substantial goals for
37 procurement by regulated public utilities of technology, equipment,
38 supplies, services, materials, and construction work, especially in
39 renewable energy, wireless telecommunications, broadband, smart

1 grid, and rail projects, from women, minority, and disabled veteran
2 businesses.

3 (F) That procurement also benefits the regulated public utilities
4 and consumers of the state by encouraging the expansion of the
5 number of suppliers for procurements, thereby encouraging
6 competition among the suppliers and promoting economic
7 efficiency in the process.

8 (G) That the long-term economic viability of this state depends
9 substantially upon the ability of renewable energy, wireless
10 telecommunications, broadband, smart grid, and rail projects to
11 incorporate women, minority, and disabled veteran businesses into
12 those projects.

13 (2) It is the purpose of this article to do all of the following:

14 (A) Encourage greater economic opportunity for women,
15 minority, and disabled veteran business enterprises.

16 (B) Promote competition among regulated public utility
17 suppliers in order to enhance economic efficiency in the
18 procurement of electrical, gas, water, ~~cable television~~, and
19 telephone corporation contracts and contracts of their
20 commission-regulated subsidiaries and affiliates.

21 (C) Clarify and expand the program for the procurement by
22 regulated public utilities of technology, equipment, supplies,
23 services, materials, and construction work from women, minority,
24 and disabled veteran business enterprises.

25 SEC. 3. Section 8283 of the Public Utilities Code is amended
26 to read:

27 8283. (a) The commission shall require each electrical, gas,
28 water, ~~cable television~~, and telephone corporation with gross annual
29 revenues exceeding twenty-five million dollars (\$25,000,000) and
30 their commission-regulated subsidiaries and affiliates, to submit
31 annually, a detailed and verifiable plan for increasing procurement
32 from women, minority, and disabled veteran business enterprises
33 in all categories, including, but not limited to, renewable energy,
34 wireless telecommunications, broadband, smart grid, and rail
35 projects.

36 (b) These annual plans shall include short- and long-term goals
37 and timetables, but not quotas, and shall include methods for
38 encouraging both prime contractors and grantees to engage women,
39 minority, and disabled veteran business enterprises in subcontracts
40 in all categories which provide subcontracting opportunities,

1 including, but not limited to, renewable energy, wireless
2 telecommunications, broadband, smart grid, and rail projects.

3 (c) The commission shall establish guidelines for all electrical,
4 gas, water, ~~cable television~~, and telephone corporations with gross
5 annual revenues exceeding twenty-five million dollars
6 (\$25,000,000) and their commission-regulated subsidiaries and
7 affiliates, to be utilized in establishing programs pursuant to this
8 article.

9 (d) Every electrical, gas, water, ~~cable television~~, and telephone
10 corporation with gross annual revenues exceeding twenty-five
11 million dollars (\$25,000,000) shall furnish an annual report to the
12 commission regarding the implementation of programs established
13 pursuant to this article in a form that the commission shall require,
14 and at the time that the commission shall annually designate. These
15 corporations shall also provide information to the commission
16 about which procurements are made with women, minority, and
17 disabled veteran business enterprises with at least a majority of
18 the enterprise's workforce in California.

19 (e) The commission shall provide a report to the Legislature on
20 September 1 of each year, on the progress of activities undertaken
21 by each electrical, gas, water, ~~cable television~~, and telephone
22 corporation with gross annual revenues exceeding twenty-five
23 million dollars (\$25,000,000) pursuant to this article in the
24 implementation of women, minority, and disabled veterans business
25 enterprise development programs. The report shall include
26 information about which procurements are made with women,
27 minority, and disabled veteran business enterprises with at least a
28 majority of the enterprise's workforce in California. The
29 commission shall recommend a program for carrying out the policy
30 declared in this article, together with recommendations for
31 legislation that it deems necessary or desirable to further that
32 policy.

33 (f) The Legislature declares that each electrical, gas, water,
34 ~~cable television~~, and telephone corporation that is not required to
35 submit a plan pursuant to subdivision (a) is encouraged to
36 voluntarily adopt a plan for increasing women, minority, and
37 disabled veteran business enterprise procurement in all categories.

38 ~~SEC. 4. Section 8284 of the Public Utilities Code is amended~~
39 ~~to read:~~

1 ~~8284. (a) The commission shall, by rule or order, adopt criteria~~
2 ~~for verifying and determining the eligibility of women, minority,~~
3 ~~and disabled veteran business enterprises for procurement contracts.~~

4 ~~(b) The commission shall develop, and require every electrical,~~
5 ~~gas, water, cable television, and telephone corporation with gross~~
6 ~~annual revenues exceeding twenty-five million dollars~~
7 ~~(\$25,000,000) and their commission-regulated subsidiaries and~~
8 ~~affiliates to implement, an outreach program to inform and recruit~~
9 ~~women, minority, and disabled veteran business enterprises to~~
10 ~~apply for procurement contracts under this article.~~

11 ~~SEC. 5. Section 8285 of the Public Utilities Code is amended~~
12 ~~to read:~~

13 ~~8285. Any person or corporation, through its directors, officers,~~
14 ~~or agents, which falsely represents a business as a women,~~
15 ~~minority, or disabled veteran business enterprise in the procurement~~
16 ~~of, or attempt to procure, contracts from an electrical, gas, water,~~
17 ~~cable television, or telephone corporation with gross annual~~
18 ~~revenues exceeding twenty-five million dollars (\$25,000,000), or~~
19 ~~a commission-regulated subsidiary or affiliate subject to this article,~~
20 ~~shall be punished by a fine of not more than five thousand dollars~~
21 ~~(\$5,000), by imprisonment in a county jail for not more than one~~
22 ~~year or in the state prison, or by both that fine and imprisonment.~~
23 ~~In the case of a corporation, the fine or imprisonment, or both,~~
24 ~~shall be imposed on every director, officer, or agent responsible~~
25 ~~for the false statements.~~

26 ~~SEC. 6:~~

27 ~~SEC. 4. Section 8286 of the Public Utilities Code is amended~~
28 ~~to read:~~

29 ~~8286. In order to facilitate the participation of women-owned~~
30 ~~businesses, minority-owned businesses, disabled veteran-owned~~
31 ~~businesses, and small businesses in contract procurement, any~~
32 ~~corporation subject to this article may consider the following~~
33 ~~measures to include those businesses in all phases of their~~
34 ~~contracting:~~

35 ~~(a) Timely or progressive payments to those businesses.~~

36 ~~(b) An amendment of the performance bond requirements so~~
37 ~~that bond requirements of electrical, gas, cable television, and~~
38 ~~telephone corporations do not prohibitively burden those businesses~~
39 ~~from procuring the corporation's business.~~

1 (c) The provision of assistance to those businesses by securing
2 contract payments to those businesses with letters of credit,
3 negotiable securities, or other financing arrangements or measures.

4 ~~SEC. 7.~~

5 *SEC. 5.* No reimbursement is required by this act pursuant to
6 Section 6 of Article XIII B of the California Constitution because
7 the only costs that may be incurred by a local agency or school
8 district will be incurred because this act creates a new crime or
9 infraction, eliminates a crime or infraction, or changes the penalty
10 for a crime or infraction, within the meaning of Section 17556 of
11 the Government Code, or changes the definition of a crime within
12 the meaning of Section 6 of Article XIII B of the California
13 Constitution.